

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

LEONA M. QUALEY, individually and as  
Personal Representative for the Estate of  
MOSES PORTILLO,

Plaintiffs,

vs.

COUNTY OF PIERCE, a political subdivision  
of the State of Washington, d/b/a Pierce  
County Sheriff's Office, EDWARD TROYER,  
an individual and THOMAS DOLAN, an  
individual,

Defendants.

NO.

COMPLAINT FOR WRONGFUL DEATH  
AND DEMAND FOR JURY

COME NOW the plaintiffs Leona M. Qualey, individually and as Personal  
Representative of the Estate of Moses Portillo, by and through their attorneys of record, Daniel  
R. Kyler and Mark B. Melter of Rush, Hannula, Harkins & Kyler, PLLC and hereby state and  
allege as follows:

I.

This case arises from the unnecessary, reckless, negligent and wrongful killing of Moses  
Portillo who was shot by Pierce County Sheriff's Deputy Thomas Dolan in violation of proper

1 police procedure, Pierce County Sheriff's Office Policies and Procedures, and Washington  
2 Statutory Authority requiring and directing de-escalation by law enforcement officers in their  
3 interactions with the members of the public whom they are sworn to protect and defend.

## 4 PARTIES

### 5 II.

6 Defendant Pierce County is a political subdivision of the State of Washington. Pierce  
7 County provides, among other things, law enforcement services through its Sheriff's  
8 Department, the Pierce County Sheriff's Office. The Pierce County Sheriff's Office's purpose is  
9 to protect its citizenry from harm and its mission is supposed to include creating a safe and  
10 secure environment in which citizens and members of the community can live, and work,  
11 enforcing the State's laws in a fair and impartial manner in accordance with applicable police  
12 standards and practices and safeguarding its citizens' constitutional rights. The reckless and  
13 negligent conduct and civil rights violations set forth herein were proximately caused by Pierce  
14 County Sheriff's Office customs, policies and practices, ratifications of misconduct and the  
15 decisions of its policymakers in failing to train, or enforce training, of its deputies.

### 17 III.

18 Defendant Edward Troyer is the elected Pierce County Sheriff of the Pierce County  
19 Sheriff's Office who, at all times relevant and material hereto was acting under color of law. In  
20 his role as the Sheriff, defendant Troyer is ultimately responsible for formulating and  
21 implementing the Pierce County Sheriff's Office policies and procedures and ensuring that its  
22 deputies are properly and adequately trained for the performance of their duties as law  
23 enforcement officers.  
24  
25

1 IV.

2 Defendant Deputy Thomas Dolan is a Pierce County Sheriff's Deputy who at all times  
3 relevant hereto was acting under color of state law and in the course and scope of his duties in  
4 the performance of his law enforcement responsibilities for the Pierce County Sheriff's Office.

5 V.

6 Plaintiff Leona M. Qualey is the mother of the deceased, Moses Portillo, with which she  
7 had a close and loving relationship. Leona M. Qualey is the Personal Representative of the  
8 Estate of Moses Portillo and is authorized to undertake this action on behalf of the Estate of  
9 Moses Portillo by statute.

10  
11 **JURISDICTION OF VENUE**

12 VI.

13 This Court has jurisdiction pursuant to 28 USC §1331, 1343 and §1367.

14 VII.

15 Venue is proper in the Western District of Washington pursuant to 28 USC §1391  
16 because the defendant Pierce County is located in this judicial district and because a substantial  
17 portion of the events and conduct giving rise to this claim occurred in Pierce County,  
18 Washington, within the Western District of Washington.

19 **STATUTORY COMPLIANCE**

20 VIII.

21 On or about May 1, 2023, Pierce County Risk Management was served with Tort Claims  
22 on behalf of Leona (Lytle) M. Qualey individually and the Estate of Moses Portillo.

23 IX.

24 All requirements to the maintenance of this action imposed by RCW 4.96 have  
25

1 accordingly been satisfied.

2 **STATEMENT OF FACTS**

3 **X.**

4 This case arises from the wrongful killing of Moses Portillo who was shot and killed by  
5 Deputy Thomas Dolan during a routine traffic stop on the basis of the vehicle's claimed "faulty  
6 rear view mirror" and claimed improper lane change while Moses Portillo was a passenger in  
7 that vehicle driven by an acquaintance. The wrongful and tortious killing of Moses Portillo and  
8 the ultimate violation of his civil rights was due to the defendants' negligent, reckless and  
9 deliberate indifference in the handling of what should have been a routine police matter resulting  
10 in the unnecessary and preventable use of deadly force.

12 **XI.**

13 On or about January 16, 2022, defendant Deputy Thomas Dolan, acting for and on behalf  
14 of the Pierce County Sheriff's Office in his role as a deputy, made a traffic stop of a vehicle in  
15 which the plaintiff's decedent Moses Portillo was a passenger. At the time of the traffic stop,  
16 Moses Portillo suffered from a broken leg which resulted in his left leg being in a cast from hip  
17 to foot substantially immobilizing Moses Portillo and the cast requiring that he stretch his left leg  
18 across the entirety of the rear seat of the vehicle in which he was a passenger.

20 **XII.**

21 During the course of Deputy Dolan's obtaining identification from the driver of the  
22 vehicle in which Moses Portillo was a passenger and obtaining Moses Portillo's  
23 identification, he observed a box of ammunition on the floor of the stopped vehicle. Deputy  
24 Dolan unholstered his service weapon and commanded the three (3) occupants of the vehicle to  
25 "put their fucking hands on the ceiling". Deputy Dolan did not seek to de-escalate his

1 confrontation with the occupants of the vehicle, including Moses Portillo, but rather escalated the  
2 situation between the deputy and the occupants of the vehicle by raising his voice, shouting,  
3 screaming profanities and aiming his service weapon directly behind the decedent Moses  
4 Portillo's head. Contrary to policy and training, Deputy Dolan did not direct the immobilization  
5 of the vehicle stopped by directing that the keys be removed from the ignition and placed outside  
6 the vehicle. Defendant Deputy Dolan did not position himself behind the C-pillar of the vehicle,  
7 nor did he retreat to his patrol vehicle where the existing spotlight of the vehicle was aimed at the  
8 occupants of the stopped vehicle to "blind" the occupants. Defendant Deputy Dolan instead  
9 continued to scream obscenities at the occupants of the vehicle and give directions which were  
10 impossible for the occupants and specifically plaintiff's decedent Moses Portillo to comply with.  
11 Defendant Deputy Dolan did not retreat to his vehicle and wait for backup. Despite no  
12 threatening action by plaintiff's decedent Moses Portillo, the defendant Deputy Dolan discharged  
13 his service weapon 12 times at point blank range directly at the back of the head, neck and upper  
14 back of Moses Portillo, striking Moses Portillo 8 times and killing him.

### 16 XIII.

17 Plaintiff's decedent Moses Portillo suffered extreme pain, suffering and eventually  
18 succumbed to the myriad of gunshot wounds inflicted on him by the defendant Deputy Dolan  
19 and died at the scene.

### 21 XIV.

22 Pierce County Sheriff Deputies including specifically Deputy Thomas Dolan, were not  
23 properly trained, failed to follow standard law enforcement practices and protocols, and may  
24 have lacked knowledge of the standards regarding the use of deadly force and de-escalation, all  
25 of which resulted in the precipitous and unnecessary discharge of Deputy Dolan's service

1 revolver, killing Moses Portillo.

2  
3 **FIRST CAUSE OF ACTION-UNCONSTITUTIONAL USE**  
4 **OF EXCESSIVE FORCE**

5 **XV.**

6 Defendants are liable for compensatory and punitive damages for subjecting plaintiff's  
7 decedent Moses Portillo to the deprivation of his rights guaranteed by the Fourth Amendment to  
8 the Constitution of the United States and 42 USC §1983 to be free from deprivation of his life.  
9 Defendants deprived Moses Portillo his life by acting in an unreasonable, reckless, dangerous  
10 and violent manner and by shooting Moses Portillo without legal cause or justification.  
11 Defendants are liable for depriving Moses Portillo of his life, liberty, property and for punitive  
12 damages, compensatory damages and reasonable attorney's fees and costs.

13 **SECOND CAUSE OF ACTION-VIOLATIONS OF**  
14 **CONSTITUTIONAL RIGHTS BY DEFENDANT**  
15 **PIERCE COUNTY AND POLICYMAKERS**

16 **XVI.**

17 Defendant Pierce County and Edward Troyer, the Pierce County Sheriff acted with  
18 deliberate indifference to plaintiffs' constitutional rights as set forth above, by failing to train its  
19 deputies, failing to supervise and monitor its deputies, failing to adopt and implement policies  
20 for, among other things, appropriate de-escalation, control of a scene, detention of a citizen and  
21 the use of lethal force as well as other aspects to be proven at the time of trial.

22 **XVII.**

23 Given the failures demonstrated by Deputy Dolan, it is predictable that the failures of the  
24 policymakers described as set forth herein would result in constitutional violations like that  
25 which occurred in this case. The plaintiffs' tragedy and the loss of Moses Portillo's life was a

foreseeable consequence of the failure of the Pierce County Sheriff's Office to train its deputies with the necessary tools to handle situations that require the use of de-escalation techniques, non-lethal tactics and the appropriate decision-making processes that should accompany the use of lethal force. The proper monitoring and supervision of the Pierce County Sheriff's Deputies would have either rectified and modified Deputy Dolan's conduct.

### **THIRD CAUSE OF ACTION-NEGLIGENCE OF PIERCE COUNTY**

#### **XVIII.**

Defendants individually and jointly owed a duty to exercise ordinary care when engaging in law enforcement activity.

#### **XIX.**

Defendants owed a duty of reasonable care to adopt and follow appropriate policing practices and procedures in the detention, control, contact, questioning and arrest of citizens. Defendants owed a duty to refrain from negligently, recklessly, wantonly and unreasonably using deadly force against its citizens in and of Pierce County; needlessly and dangerously escalating routine law enforcement encounters; failing to secure a scene and creating a deadly force situation.

#### **XX.**

Defendants owed a duty to ensure that its officers and deputies in its agency are fit for service and properly trained in law enforcement standards and protocols regarding control of a scene, dealing with citizens so as not to unnecessarily escalate encounters and to be familiar with and follow proper and reasonable standards regarding the use of deadly force.

#### **XXI.**

Defendants breached these duties when Pierce County Deputy engaged in the improper,

1 unreasonable, unnecessary and excessive use of force, including but not limited to the handling  
2 of events at the scene of this incident, the shooting and killing of Moses Portillo.

3  
4 XXII.

5 The negligent, reckless and unreasonable conduct of the defendant Deputy Dolan  
6 occurred while the deputy was in the course of his law enforcement work and amounted to  
7 misfeasance and malfeasance that created a risk of harm and actual harm which ultimately  
8 resulted in Moses Portillo's death and damages to his estate and his surviving parent/mother.

9 The deputy's actions were unreasonable, excessive and well outside the standards that reasonable  
10 law enforcement officers follow when interacting with citizens.

11 XXIII.

12 As a direct and proximate result of defendants' negligence, unreasonable conduct, failure  
13 to follow proper law enforcement practices and procedures, plaintiffs suffered general and  
14 special damages, including emotional distress, the unnecessary death of Moses Portillo and  
15 unnecessary loss of love, companionship and guidance of a son.

16 PRAYER FOR RELIEF

17 WHEREFORE, plaintiffs pray for judgment against defendants, jointly and severally as  
18 follows:

19 1. Award plaintiffs' general and special damages including damages for pain,  
20 suffering, parent loss of consortium pursuant to 42 USC §1983 and §1988 and in amounts to be  
21 proven at the time of trial;

22 2. Award reasonable attorney's fees and costs pursuant to 42 USC §1988 or as  
23 otherwise available under the law;

24 3. Award damages to plaintiffs and each of them for the unreasonable, negligent  
25



conduct of defendants, the negligent failure of following reasonable and standard law enforcement policies and practices and the unnecessary and reasonable use of excessive, deadly force;

4. Awarding punitive damages on plaintiffs' claims under 42 USC §1983;
5. Awarding all applicable pre and post-judgment interest as permitted by law;
6. For such other and further relief as the Court may find fair and just.

### DEMAND FOR JURY TRIAL

Pursuant to Federal Rule of Civil Procedure 38(b), plaintiffs hereby demand a jury for all issues so triable.

DATED this 27th day of July, 2023

By: s/ Daniel R. Kyler

By: s/Mark B. Melter

Daniel R. Kyler, WSBA #12905

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